

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

116611 Final
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FILE: B-218881.2

DATE: July 24, 1985

MATTER OF: Coliseum Construction, Inc.

DIGEST:

1. GAO will not reopen a case that was closed because of the protester's failure to file its written comments on the agency's report within the 7-day period prescribed by GAO Bid Protest Regulations. Those regulations specifically provide that comments on the agency's report shall be filed (received) no later than 7 working days after the protester receives the agency's report, and the statement in GAO's form notice acknowledging a protest that the protester must "submit" its comments within the 7-day period does not imply that placing the comments into the mails by the 7th working day constitutes a timely filing.
2. GAO will not invoke the "significant issues" or "good cause" exceptions to the timeliness requirements where the protest, which was dismissed because of the protester's failure to file timely comments on the agency's administrative report, does not raise issues of first impression which would have widespread significance to the procurement community, and no compelling reason beyond the protester's control prevented the filing of timely comments.

Coliseum Construction, Inc. requests reconsideration of our dismissal of its protest concerning the award of a contract under invitation for bids (IFB) No. N00123-85-B-0523, issued by the Department of the Navy. We closed the case because Coliseum did not file its written comments on the Navy's administrative report within the 7-day period prescribed by GAO Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1985). We decline to reopen the case.

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Coliseum's original protest was filed on May 13, 1985, and the Navy's administrative report was received on June 18, the scheduled due date. Contrary to our filing requirements, Coliseum failed to file comments or to request that we consider the protest on the basis of the existing record by the June 27 due date. Accordingly, we issued a dismissal notice and closed our file in the matter.

Coliseum now contends that its comments on the Navy's report were timely because the firm received the report on June 19, and mailed its comments to this Office on June 25, 4 working days later. In this regard, Coliseum refers to our May 13 form notice to the firm acknowledging receipt of the protest, which provided that the firm, within 7 working days of receipt of the report, was required "to submit" written comments on the report or to advise us that it wished to have the protest considered on the basis of the existing record. Coliseum contends that our use of the word "submit" in our notice implies that comments must be "sent" (i.e., mailed) no later than the 7th working day, not that they must be received in this Office by that time. The firm's position is mistaken.

Our regulations, 4 C.F.R. § 21.3(e), supra, specifically provide that comments on the agency's report "shall be filed" with this Office within 7 (working) days after receipt by the protester of the report, and that failure to file comments (or to file a statement requesting that the protest be decided on the existing record) within the 7-day period will result in dismissal of the protest. Furthermore, our regulations define the term "filed" regarding protests as meaning receipt of the protest submission in this Office. 4 C.F.R. § 21.2(b). Contrary to Coliseum's assertion, the term "filed" does not refer only to the original protest submission, but also refers to the comments on the agency's report and to the statement requesting that the protest be decided on the basis of the existing record.

We do not agree that our use of the word "submit" in our form notice acknowledging receipt of a protest is confusing or that it conveys a meaning different from the timeliness requirements set forth in our regulations, 4 C.F.R. § 21.3(e), supra. Webster's New Collegiate Dictionary, upon which Coliseum expressly relies, in fact

defines "submit," in the sense applicable here, to mean "to commit to another (as for decision or judgment)." See also The Random House College Dictionary (1980 Rev.), which defines "submit" to mean "to present for consideration." We suggest that a document cannot be effectively considered by a decision-making body until that body has in fact received it.

In any case, our Bid Protest Regulations were published in the Federal Register, 49 Fed. Reg. 49,417 (1984), and Coliseum is held to be on notice of their contents as a result. See International Development Institute, B-218048.2, Feb. 11, 1985, 64 Comp. Gen. ___, 85-1 CPD ¶ 179. Therefore, our use of the word "submit" in our notice cannot be held to imply that the timely filing requirement for comments on the agency's report can be met merely by placing those comments into the mails. Since Coliseum's comments were not filed within the prescribed 7-day period, the protest was properly dismissed, and the file will not now be reopened.


Coliseum also urges that, even if the dismissal of its protest was proper, we should now consider the protest on the merits under our "significant issues" and "good cause" exceptions to the timeliness requirements. 4 C.F.R. § 21.2(c). We do not concur.

The "significant issues" exception will only be invoked when the issues raised in an untimely protest are of widespread significance to the procurement community and have not been previously considered. Kearflex Engineering Co., B-212537, Feb. 22, 1984, 84-1 CPD ¶ 214. Coliseum essentially alleges that the Navy evidenced bad faith in determining that the firm's bid of \$0.01 per square foot for a certain line item under a previous solicitation (subsequently canceled) was both mathematically and materially unbalanced, and then in accepting its competitor's bid under the resolicitation which contained exactly the same square footage price for that item. However, it appears from the record that the Navy's estimates in the original IFB were invalid, so that Coliseum's mathematically unbalanced bid under the original estimates was also materially unbalanced. On the other hand, the competitor's bid under the resolicitation, while also mathematically unbalanced, was not found to be materially unbalanced because the new IFB contained revised estimates which the Navy believed to be accurate. Since we have considered such an issue of mathematical versus material bid unbalancing in previous cases, see, e.g., ABC Siding & Remodeling, B-213390, July 10, 1984, 84-2 CPD ¶ 32, and the resolution of that issue here would not benefit parties

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other than Coliseum, we will not invoke the "significant issues" exception. Knox Manufacturing Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 CPD ¶ 281. Likewise, the "good cause" exception, which is limited to circumstances where some compelling reason beyond the protester's control prevents a timely protest filing, Ensign Aircraft Co., B-207898.3, Apr. 1, 1983, 83-1 CPD ¶ 340, clearly not the case here, will not be invoked. Knox Manufacturing Co.--Request for Reconsideration, B-218132.2, supra.

Accordingly, we will not reopen the protest.

for 
Harry R. Van Cleve
General Counsel